IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7308 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MANOJ SHYAMRAO PATIL : Petitioner.

Versus

COMMISIONER OF POLICE: Opponent.

Appearance:

MS DR KACHHAVAH for Petitioner

Mr. S.P. Dave, APP Respondent No. 1, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 17/11/97

ORAL JUDGEMENT

By this application under Article 226 of the Constitution the petitioner who is the detenu calls in question the detention order dated 24th February 1997 passed by the Police Commissioner of Surat City invoking Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act (hereinafter referred to as "the Act").

2. In short, what is alleged is that Manoj Shyamrao Patil the petitioner was found to be the yahoo, vagrant,

fierce, hound head-strong and tigerish person to the society as he was often striking terror in the society resorting to anti-social activities. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism he used to cause the people to bend his way. His hellish and infernal activities disturbing public order were going berserk. The opponents found that against him two offences were found to have been registered, as FIR, were lodged with Limbayat police station. The first FIR lodged revealed that the petitioner committed the offence punishable under Section 323, 324, 504, 506(2) r/w. 114 of I.P.C; while as per the second FIR the petitioner was alleged to have committed the offence punishable under Section 323, 504, 506(2) r/w.114 of the Indian Penal Code. The Police Commissioner of the city of Surat got recorded certain statements after the petitioner in connection with the above said two offences registered was arrested and released on bail and got himself satisfied making the enquiry through his subordinate that the petitioner was dangerous person because people had cultivated the feelings of insecurity because of impending danger to their safety and used to chevy seeing him or hearing about him. To curb his anti-social & chaotic activities & unspeakable diabolism terrorising the society the ordinary law was falling short and was sounding dull. The only way out was to detain him under the Act. He therefore passed the impugned order the legality of which is under challenge.

3. Challenging the order, it has been submitted that there was delay in passing the order; within reasonable time the order was not passed; with the result the petitioner could not get the opportunity to have the effective representation; and his right to defend was prejudicially affected. The instances about the offences noted in the order were not sufficient to brand him a dangerous person or to form a reasonable belief that maintenance of public order was adversely affected. The detaining authority ought to have disclosed the particulars of the witnesses whose statements were recorded in support of the order passed. No doubt, under Section 9 of the Act the authority had the privilege but that was to be exercised judiciously, and not arbitrarily or capriciously so as to deprive the detenu of his right to have effective representation. As the particulars were not given the petitioner was deprived of his right to have the effective representation against the order. The statements recorded were vague and necessary particulars when wanting the order was bad in law and was liable to be quashed.

4. This application can well be dealt with and disposed of on two main grounds and therefore as submitted it is not necessary to dwell upon the other grounds canvassed before me. I would not therefore express any view on those other grounds, but would confine only to the two grounds going to the root of the case.

5. In the case of Piyush Kantilal Mehta vs. Commissioner of Police - 1989 (1) G.L.R. 563, the Supreme Court has distinguished maintenance of "law and order" and "public order" because most often the two expressions are confused and detention orders are passed by the concerned authorities to curb the activities of a person which many times exclusively fall within the domain of "law and order" and nothing to do with the maintenance of "public order". According to that decision, as per the requirement of the Act the detaining authority has to satisfy the court that the activities of the detenu were and are such which are the challenges to the maintenance of public order and the same cannot effectively be dealt with under ordinary law i.e. under the head "law and order". If that is not shown, the order of detention cannot be maintained. In other words, the detaining authority has to show that the activities of the detenu are of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subverrsive activities affecting the community at large or large section of the society which has the degree of disturbance and which has impact upon the even tempo of life of the society of the people of locality which would help the court in determining whether such activity amounts only to breach of law & order, or it amounts to breach of public order.

6. Admittedly, against the petitioner only two complaints are lodged which I have, in short, referred hereinabove. I therefore do not think it necessary to repeat the same again. As per those complaints, it appears that the cases of simple hurt or grievous hurt were under investigation and later on the chargesheet came to be filed against the petitioner. Taking the aforesaid two incidents and the allegations levelled about the hurt having been caused are accepted on their face value, it is difficult to comprehend that these two incidents involve a matter of public order. Those two incidents were confined to the individual namely the injured person having no adverse effect prejudicial to the maintenance of public order or disturbing even the tempo of life or peace and tranquility of the locality or

normal set up of the society. Such incident can hardly have any implication inciting the people to commit the breaches of the law and order which may result in subversion of the public order. For my such view, a reference to a decision in the case of Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police and others - 36(2) [1995 (2)] G.L.R. 1268, may be made. Above stated two incidents cannot be said to be insurmountable under the general law. When these two incidents cannot have the effect of disturbing the public order and they can well be tackled under ordinary law, the same will be the matter of "law and order" situation, and not maintenance of public order. When that is the case, one of the requirements prejudicial to the maintenance of public order is lacking in the case.

7. If the person is `dangerous person' within the meaning of the Act and his activities are prejudicial to the maintenance of public order, certainly he can be detained but before a person is branded as `dangerous person', it is necessary to show and satisfy the court that the person is habitually committing the offences and not once or twice. In other words, he is committing the wrongs repeatedly or persistently and that implies a thread of continuity stringing together similar repetitive acts but not isolated, individual, and dissimilar acts. In short repeated persistence and similar acts are necessary to justify the inference of habit so as to brand the person as `dangerous person'. Stray incidents or isolated offences are not sufficient to conclude that a particular person is `dangerous person'. According to this requirement, the petitioner, on the basis of the above said two incidents, cannot be branded as `dangerous person'. If some witnesses have stated that some incidents of beating by the petitioner or giving threats had taken place, the same would not have any bearing on the maintenance of public order for the petitioner can be punished under general law for the alleged offences committed by him, but surely the acts constituting the offences cannot be said to have affected even the tempo of the life of the community or normal set up giving rise to tumults or miseries & woes or breeding insecurity fear of violence at any time amongst people. In this case, therefore, the petitioner cannot be branded as `dangerous person' habitually committing the offences or carrying on the activities dangerous to the maintenance of public order.

8. It is pertinent to note that the authority passing the detention order has to satisfy the conscious of the court producing necessary materials along with

necessary affidavit. In this case, no affidavit on behalf of the respondent is filed so as to justify the order of detention passed.

9. For the aforesaid reasons, the order cannot be maintained. The same, being illegal and unconstitutional, is hereby quashed. The petitioner is ordered to be set at liberty forthwith if no longer required in any other case. Rule accordingly made absolute.

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